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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JOSE LUEVANO,

12 Plaintiff,

13 v.

14 ANTHONY JENKINS, et al.,

15 Defendants.
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No. 2:22-cv-0091 KJN P

ORDER

17 Plaintiff is a state prisoner, proceeding pro se and in forma paupers, with an action
18 brought under 42 U.S.C. § 1983. On Augusts 21, 2023, plaintiff renewed his opposition to
19 defendants' motion to opt out of the settlement conference, demands a settlement conference, and
20 renews his request for appointment of counsel.

21 On August 3, 2023, the undersigned found good cause to grant defendants' motion to opt
22 out of the settlement conference, following consideration of plaintiff's prior opposition to the
23 motion. (ECF No. 42.) Indeed, on August 15, 2023, defendants filed a motion for summary
24 judgment claiming that plaintiff failed to exhaust his administrative remedies prior to filing the
25 instant action. Because defendants are pursuing their affirmative defense of exhaustion of
26 administrative remedies, it is premature to hold a settlement conference in this action.

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Plaintiff's Renewed Motion for Counsel

As discussed in the August 3, 2023 order, district courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). At this juncture, the court does not find exceptional circumstances warrant the court requesting an attorney to voluntarily represent plaintiff. See 28 U.S.C. § 1915(e)(1). Indeed, in light of defendants' pending motion, it is unclear whether plaintiff is likely to succeed on the merits, and the record reflects that plaintiff is able to articulate his claim and defend his positions. Having considered the factors under Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009), the court again finds that plaintiff has not met his burden of demonstrating exceptional circumstances warranting the appointment of counsel at this time. Plaintiff's motion is denied without prejudice.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's August 21, 2023 motion (ECF No. 47) is denied; and
2. Plaintiff's motion for the appointment of counsel (ECF No. 47) is denied without prejudice.

Dated: August 24, 2023


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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